

BENTON CIRCUIT COURT: LOCAL RULES
DECEMBER 3, 2004

The Benton Circuit Court, hereby adopts, amends, deletes, and/or re-numbers all existing rules. Pursuant to Trial Rule 81, all Courts are to consolidate local rules into one document and with an appropriate numbering system. The local rules to be applied and followed in this Court are specified below. These rules may be amended from time to time to delete or add rules as needed. All previous General Orders are hereby terminated.

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Rule 1: Discovery: Parties shall not file their Motion to Produce, Motion For Interrogatories, Response To Discovery, or other requests for Discovery with the Court, except as required by the trial rules, such as to lengthen or shorten the time for response or to compel discovery. The parties shall request discovery from the other party or non-parties pursuant to the trial rules and case law. Either Party may file a “Notice” of a Motion to Produce or Response to Discovery with the Court if they wish, but one is not required.

Rule 2: Facsimile Transmissions : Rule: No faxes unless it meets the Exception.

Exception: **Only fax when** you are filing a Motion to cancel, continue, or change a hearing that is *7 business days or less from the date of the fax, OR there is some other emergency need* such that the parties need to be timely informed.

Do Not: send paperwork by fax and regular mail. PICK ONLY ONE, PER THIS RULE.
(sending by fax and mail creates confusion and extra paperwork)

Facsimile transmissions: send to (765) 884-2027, only ten pages or less. However, any faxed Motion, Response, etc., must contain a proper cover sheet and Proposed Order (see rule 20). The original document and the transmission log must be maintained by the sending party for the duration of the litigation.

Rule 3: Custody, Removal, and Destruction of Exhibits in Civil Cases:

- A. Custody. After being marked for identification, models, diagrams, exhibits, and material Offered or admitted in evidence in any cause pending or tried before the Court or jury shall placed in the custody of the Court Reporter unless otherwise ordered by the Court.
- B. Removal. After a case has been decided, unless an appeal has been taken, all models, diagrams, exhibits, or material placed in the custody of the Court Reporter shall be removed by the parties offering them in evidence, except as otherwise ordered by the Court. At the time of removal, a detailed receipt shall be given to the Court Reporter and filed with the cause.
- C. Destruction of Exhibits. After a case is decided and no appeal taken, or after all appeals are completed, the Court Reporter may give notice in writing to the party introducing the exhibit giving a time within which the exhibit shall be removed from the custody of the Court reporter. If the party does not recover the exhibit within the time indicated, the Reporter may dispose of same and the party shall be charged with any expenses of such disposition.

Rule 4: Contested Divorces “Statement of Marital and Non-marital Assets”: When the parties are disputing or expect to dispute the division of marital assets or what property is a marital asset, the parties shall complete the form entitled STATEMENT OF MARITAL AND NON-MARITAL ASSETS, INCOME AND EXPENSES. This form is available at the Clerk’s Office. The parties shall exchange the STATEMENT not later than fourteen days before the contested hearing each shall file a copy with the Court not later than two days before the hearing.

Rule 5: Divorces or Separations With Any Child Under Age 18 (Minimum Counseling):

When the parties file for a Dissolution of Marriage or Legal Separation, and they have one or more children under the age of 18, they must attend a minimum of 4 hours counseling per parent prior to the final hearing or waiver of final hearing. This session or sessions of counseling must occur after the Petition is filed.

The Counseling sessions may be separate, however, the Court recommends joint counseling. The counselor is to be paid equally by the spouses, unless the parties otherwise agree. The purpose of the counseling is to reconcile the marriage, if possible, and to learn and understand the impact of a divorce on the child or children. The parents are to learn how to properly recognize and cope with the child or children and their needs.

The parties shall ensure the counselor files with the Court, a statement indicating the following:

{Date of sessions; Persons present; Length of session; Cost of all sessions; and Issues discussed}
The counselor's statement must be on file with the Court prior to the Court granting a Decree of Dissolution or Legal Separation.

The parties may separately or jointly choose among the counselors or locations listed below, OR another counselor approved by the Court either verbally or in writing.

1. Shari Stembel, Ph.D., HSPP
Clinical Psychologist
708 E. 9th Street
P.O. Box 307 Fowler, IN 47944
Telephone: 765-884-1506 Fax: 765-884-1507
2. Wabash Hospital, Inc (several locations)
 - A. Wabash Valley Hospital, Inc.
Outpatient Services
1207 East Grace Street
Rensselaer, IN 47978
(219) 866-4194
 - B. 610 Main Street
Lafayette, IN 47901
(765)423-2638
 - C. 101 Suzie Lane
Attica, IN 46923
(765)762-6187

Rule 6. Parenting Time Guidelines: (Application in Order—Mediation Requirement)

A. Incorporation By Reference in Decree or Order.

This Court has adopted (January 24, 2001) PARENTING TIME GUIDELINES set forth by the Supreme Court Of Indiana on December 22, 2000. The Guidelines, when incorporated by reference in an Order or Decree, shall be the Guidelines in place at the time of such Order or Decree. Said Guidelines, when applicable, apply to all Orders entered on or after January 24, 2001 effecting or modifying visitation in any manner. The Guidelines are not applicable to the extent inconsistent with specific terms of the Order or when the Guidelines are not referenced in the Order.

B. Mediation Requirement.

The Supreme Court Ordered that the Guidelines apply “to all child custody situations, including paternity cases and cases involving joint legal custody.” Further, the Supreme Court Ordered that “When a disagreement occurs regarding parenting time and the requirements of these

Guidelines, both parents shall make every effort to discuss options, including mediation, in an attempt to resolve the dispute before going to court.” The Supreme Court Ordered that **“If court action is initiated, the parents shall enter into mediation unless otherwise ordered by the court.”** Therefore, as a result of the Indiana Supreme Court Order, this Court now summarizes below the procedures to be followed in this Court.

In all disputes concerning visitation, parenting time, custody, or modification of custody, the parties shall informally resolve the case or follow formal mediation: (see below)

1. *Informal Resolution:* Try to resolve the dispute on their own, with a third neutral person, or with a registered or non-registered mediator of their own choosing.

2. *Formal Mediation:*

a. *Petition or Motion:* Once Court action is initiated, the parties shall enter formal mediation pursuant to the *Rules For Alternative Dispute Resolution and Rule 2* thereof entitled MEDIATION, unless formal mediation has already been completed for the current dispute prior to the filing of the Petition or Motion and proof is shown to the Court.

b. *Mediator:* The parties may agree on any registered mediator as shown on the Commission’s registry without Court approval. The parties may agree upon a non-registered mediator who is approved by the Court. *Approval by phone is appropriate.*

3. *Costs of mediation:* Pursuant to Mediation Rule 2.6, the Court now fixes the costs for registered mediators at the hourly rate of \$100.00 and for non-registered mediators at the hourly rate of \$50.00. Both parties shall pay one-half of said costs unless otherwise agreed with the mediator or Ordered by the Court.

4. *Mediation process:* The mediation process shall be the procedure as set forth in Rule 2; Mediation and detailed in Rules 2.7, 2.8, 2.9, 2.10, 2.11.

Rule 7: Visitation Schedules Prior to 1997: Several cases prior to 1997 Ordered visitation pursuant to a “Standard Visitation Schedule”, without having the schedule in the file or identifying a specific reference. The Clerk’s Office will maintain separately, two pages, entitled Generic Orders Prior to 1997, which is available upon request.

Rule 8: Jury Pool: Beginning late 2004, for prospective petit jurors for 2005 and thereafter, the Clerk shall cause the jury commissioners to randomly select 1000 prospective jurors per year. The jury commissioners shall select said jurors with 70 % from voter registration and 30% from the emergency 911 list. This Court will use the “Two Tier Notice and Summons” procedure set forth in subsection (b) of Jury Rule 4. The Bailiff shall send the first notice and questionnaire. The Clerk shall prepare and the Sheriff’s department shall serve the Summons for jury trial. The Clerk shall send, along with said summons, a notice of directions, compensation, appropriate attire, expected meals, and how to obtain hearing devices or other aids the jurors deems proper. This rule continues in effect since adopted January 1, 2003.

Rule 9: Penalty for late payments or non-appearances in Infraction cases: Scheduled fines shall be increased \$25.00 for any person failing to appear or make payment on or before the date of the initial hearing as marked on the bottom of the “Complaint and Summons” (ticket). Payment must be received by the Clerk’s Office by the date of the hearing, regardless of whether paid in person or by mail, to avoid the additional fine. The fine shall increase an additional \$25.00 per infraction violation if any portion of the fine, including the first \$25.00 penalty, remains unpaid at the close of the Clerk’s Office on the 30th day following the date of the hearing. Paid means received, not placed in the mail. The Clerk shall post and give notice.

For infractions offenses not listed on the Clerk’s Schedule Of Fine And Costs, the total cost shall be lowest cost scheduled by the Clerk for any infraction, excluding seatbelt violations.

Rule 10: Procedure For Selection Of Special Judges In Civil And Juvenile Proceedings: Pursuant to Trial Rule 79 of the Indiana Rules of Trial Procedure and adopts Local Rule 2. This Rule shall provide for the appointment of an eligible Special Judge within the administrative district as set forth in Administrative Rule 3(A). That in the event no Judge provided herein is eligible to serve or the circumstance of the case warrants the selection of a Special Judge by the Indiana Supreme Court, such fact will be certified to the Supreme Court.

The following Judges may be appointed to serve as Special Judge in the Benton Circuit Court in Civil or Juvenile cases:

Elected Judge in the following Courts: Clinton Circuit Court; Fountain Circuit Court; Montgomery Circuit Court; Tippecanoe Circuit Court; Warren Circuit Court; Carroll Circuit Court; White Circuit Court

The appointment of a Special Judge under this rule is pursuant to Trial Rule 79(H) and will be made only if no Special Judge is first accepted pursuant to Trial Rule 79(D), (E), or (F), or if the acting Judge disqualifies or recuses himself pursuant to Trial Rule 79(C).

A Judge appointed to serve as “Special Judge” under this rule must accept jurisdiction in the case unless disqualified pursuant to the Code of Judicial Conduct, is ineligible for service, or excused from service by the Indiana Supreme Court. The Order of Appointment under this rule shall constitute acceptance and no oath or additional evidence of acceptance is required.

Rule 11: Special Judge Selection In Criminal Cases:

The following shall compromise the list of Judges available for selection as Special Judges in criminal cases in the Benton Circuit Court, said selection being made sequentially to the next Judge available on the list, subject to disqualification as permitted under the Code of Judicial Conduct.

Pursuant to Criminal Rule 13, it shall not be necessary for the selected Judge to indicate acceptance by oath or otherwise. The Judge assigned automatically assumes the status as Special Judge unless the Judge rejects the case. The list consists of the elected Judges for the following Courts as of the time of the appointment: 1. Newton Superior Court 2. Warren Circuit Court 3. Jasper Circuit Court 4. White Superior Court 5. Newton Circuit Court and the 6. Jasper Superior Court.

Rule 12: Infractions Dismissed by Prosecutor Pursuant to the Diversion/Deferral Program:

The Prosecutor's Program allows the Prosecutor to establish a cost or fee for infraction cases, and if other conditions are met, the Prosecutor has the right to dismiss the infraction offense. Numerous Motions to Dismiss are filed and it is essentially a needless consumption of the Court's time to sign each infraction dismissal. There is no right of the Court to deny these Motions to Dismiss.

Therefore, whenever the Prosecutor's Office files a Motion to Dismiss any Infraction pursuant to their Diversion/Deferral agreement, said Motions need not be signed by the Judge. Further, the Clerk need not give these Motions to Dismiss Infraction to the Court or Court Staff. The Clerk shall enter the dismissal in the chronological case summary and show the case dismissed. This Order applies **only** to an Infraction that is **dismissed** under the Prosecutor's Diversion/Deferral Program. All other cases, whether infractions, misdemeanors, or felony dismissals, shall be forwarded for the Court's review.

Rule 13: Probation Officers Permitted to Carry Handguns: Pursuant to Senate Bill 0032, now codified at I.C. 11-13-1-3.5. The Court now permits any Benton County Probation Officer to carry a handgun so long as the following conditions are first met: The Probation Officer must obtain a license to carry the handgun under I.C. 35-47-2; the Probation Officer must complete a certified handgun safety course, certified by the law enforcement training board under I.C. 5-2-1-9 (m); the Probation Officer shall complete and successfully pass a handgun safety and qualifying course; the course may be a session similar to or the same as that taken by one or more of the local law enforcement officers employed in Benton County. Being familiar with the training and recent qualifying scores of the two current probation officers, each probation officer is entitled to carry a handgun while on duty. Further, each may continue to carry a handgun by meeting the above conditions.

Rule 14: Court Reporters—Transcripts, Depositions, Reimbursement:

LOCAL RULE GOVERNING COURT REPORTERS – MODEL I (REVISED)

The Benton Circuit Court, as required by Administrative Rule 15 for Court Reporters as set forth by the Supreme Court of Indiana, hereby adopts this local rule for approval by the Supreme Court, the same reading as follows:

SALARY: The Court Reporter shall be paid an annual salary for time spent working under the control, direction and direct supervision of the Court during any regular work hours, gap hours, or overtime hours.

INDIGENT WORK (Transcripts for litigant declared indigent)

A maximum per page fee for County indigent transcripts shall be set at \$3.75 per page. The Court Reporter shall submit a claim directly to the County for the preparation of the county indigent transcript. A maximum per page fee for State indigent transcripts shall be set at \$3.75 per page. A maximum per page fee for an Expedited Transcript within 14 days shall be set at \$7.00 per page. A maximum per page fee for an Expedited Transcript within 7 days shall be set at \$10.00 per page.

PRIVATE TRANSCRIPTS (Transcripts paid for by a Private Party.)

A maximum per page fee for private transcript work shall be set at \$3.75 per page.

A maximum per page fee for copies of transcript/deposition shall be set at \$1.00 per page.

A maximum per page fee for Depositions shall be set at \$4.00 per page, in addition to recording charge.

A maximum per page fee for an Expedited Transcript within 14 days shall be set at \$7.00 per page. A maximum per page fee for an Expedited Transcript within 7 days shall be set at \$10.00 per page.

ANNUAL REPORT

The Court Reporter shall report on an annual basis to the Indiana Supreme Court Division of State Court Administration on forms prescribed by the Division, all transcript fees (either county indigent, state indigent or private) received by the Court Reporter.

DEPOSITIONS

If the Court Reporter, upon agreement by the Court, elects to engage in private practice through recording a deposition and/or preparing a deposition transcript and the Court Reporter utilizes the Court's equipment, work space and supplies, the Court Reporter shall reimburse the Court as follows:

A Recording Fee of \$15.00 for the first hour and \$10.00 per hour thereafter, will be charged.

The Court Reporter shall reimburse the Court in the amount of \$.30 per page for the use of equipment, workspace and supplies (i.e.; recorder, computer, printer, copier, workspace, and supplies – tapes, paper, etc.). A daily log sheet shall be kept by the Court Reporter and submitted to the Court on a quarterly basis. The Court Reporter shall reimburse the Court on a quarterly basis. If the Court Reporter elects to engage in private practice through recording a deposition and/or preparing a deposition transcript, such private practice shall be conducted outside of regular working hours.

TRANSCRIPTS

All transcript preparation required by law to be prepared by the Court Reporter, shall be prepared during regular business hours, when possible, but not until all other duties necessary for operation of the Court are completed. The Court Reporter shall be entitled to compensation for Gap and Overtime hours worked beyond regular salary as follows: Compensatory time off from regular work hours shall be given in the amount equal to the number of Gap Hours worked (hours worked in excess of regular hours, but not in excess of 40 hours); and Compensatory time off from regular work hours shall be given in the amount of one and one-half (1-1/2) times the number of overtime hours worked (hours worked in excess of 40 hours).

Rule 15: Community Transition Program: Pursuant to I.C. 11-10-11.5-12, the Probation Office shall monitor said program. Probation may receive the paycheck of the offender; conduct proper withholdings for home detention fees, fines, court costs, restitution, pauper attorney fees, probation fees, and any other fee Ordered by the Court. The balance of said payroll shall remit to the offender. The offender shall pay taxes, withholdings, housing, food, clothing, and any other expenses. Probation is responsible for costs and fees due and owing Benton County, pursuant to a payment schedule arranged. Probation may withhold child support amounts due, but only for Benton County, not other jurisdictions. The offenders shall be responsible for support payable in other jurisdictions.

Rule 16: Supplemental Public Defender Services Fund: Pursuant to I.C. 33-9-11.5-6, the Clerk shall deposit all reimbursement for public defender costs in the Benton County Supplemental Public Defender Services Fund. This applies to all cost paid related to public defender services. The Auditor's Office shall have a fund as required by I.C.33-9-11.5-1 for deposits. The monies shall remain in the fund and not revert to any other fund pursuant to I.C. 33-9-11.5-3 and I.C. 33-9-11.5-4.

Rule 17: Original files (documents) on File: The Clerk and Court shall not permit any person to remove the original file or documents from the Clerk or Court's control. Past practices of permitting original files or documents to be taken from the building is terminated.

Rule 18: Martin Luther King Holiday: All Courts have been closed on the nationally recognized holiday. The Benton County holiday schedule typically does not recognize this holiday for county employees. This Court has in past years followed the county schedule in fairness to all other county employees. However, several individuals and Judges have recently questioned the legality of this Court being open and conducting any business. Therefore, this Court, including the Clerk and Probation, will be closed irrespective of the county holiday schedule.

Rule 19: Bond Schedule; Automatic No Contact Orders; Order To Appear: This Court has a bond schedule that jail personnel are to follow for those arrested. There is an automatic No Contact Order for certain offenses. Those posting bond are given an appearance date for Court. These documents and the schedule are modified regularly and are not set forth here. Those documents are available from the Clerk, Court, or Jail upon request.

Rule 20: Proposed Orders: All parties shall submit a Proposed Order with all Motions, Petitions, or filings which ordinarily require an Order to be entered.

Rule 21: Jury Trial Procedures: Parties shall settle cases within 14 days of the trial if possible. Proposed preliminary and final instructions shall be filed with the Court 10 days prior to trial, with the right to amend the proposed final instructions. The "one pass" selection process shall be used, meaning if the juror is not struck the first opportunity, you can not later use a preemptory challenge.

Examined and Approved December 3, 2004.

Rex W. Kepner, Judge Benton County Circuit Court